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BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2017-381-A

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IN RE:

Office of Regulatory Staff's Petition for  
an Order Requiring Utilities to Report  
the Impact of the Tax Cuts and Jobs Act

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) **PETITION FOR REHEARING OR**  
) **RECONSIDERATION**  
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Petitioners Landtech, LLC ("Landtech") and Lake Carolina Development, Inc. ("Lake Carolina Development") ( together "Petitioners"), pursuant to S.C Code Ann. § 58-5-330 and 10 S.C. Code Ann. Regs. 103-825, hereby seek rehearing or reconsideration of Order No. 2018-252 (the "Order") issued on April 4, 2018 by South Carolina Public Service Commission (the "Commission"). In support of its petition, Petitioners would show the Commission the following:

**BACKGROUND**

1. Landtech is a real estate development and management firm located at 522 Lady Street, Suite 200, Columbia, SC 29201. LandTech, through its affiliates Coatbridge Development, LLC, Lakes at Barony, LLC and Alden Pond, LLC, has multiple residential communities under development in the Midlands of South Carolina and specifically within the service area of Palmetto Utilities, Inc. ("PUI") and/or Palmetto Wastewater Reclamation, LLC

("PWR"). Active projects include the Coatbridge, Sterling Ponds, Long Cove, Lakes at Barony Place, Alden Glen and Autumn Pond. In total, these communities represent approximately 600 residential units, with approximately 150 currently developed and 450 remaining to be developed. Landtech has made and will make in the future contributions in aid of construction ("CIAC") to PIU and PWC.

2. Lake Carolina Development is a real estate development firm located at 1276 Assembly Street, Columbia, SC 29201. Lake Carolina Development is the developer of the Lake Carolina master planned development located in Richland County, SC, which is located within the service area of PUI. Lake Carolina consists of a mixture of commercial districts and residential neighborhoods, with approximately 3,500 existing residential dwelling units, 300 apartment units and 100,000 square feet of commercial development and approximately 7 acres of commercial land and 420 residential units remaining to be developed. Lake Carolina Development has made and will make in the future contributions in aid of construction ("CIAC") to PIU and PWC.

3. On March 27, 2018, Palmetto Utilities, Inc. ("PUI") and Palmetto Wastewater Reclamation, LLC ("PWR") (together the "Companies") filed a "Motion for Modification of Rate Schedule Without Hearing" ("Motion") in the instant Docket. Neither of the Petitioners were served with the Motion.

4. According to the Companies, Section 13312(B) of the Federal Tax Cut and Jobs Act, Public Law 115-97, effective December 22, 2017 ("Tax Act"), which provides that CIAC will no longer be treated as contributions to capital but instead as ordinary income, would result

in an increase in income to the Companies in 2018 and a potential increase in their federal and/or state tax burden. (Motion at Paragraph 3).

5. In their Motion, the Companies sought to add a “tax multiplier provision to their approved rate schedules ....” (Motion at Paragraph 7).

6. The purpose of this “tax multiplier” according to the Companies would be to provide that “the burden of taxes on contributions in aid of construction would be borne by those future customers, developers and others who *make* the contributions in aid of construction (and thus create the tax liability), versus the Companies’ customers as a whole.” (Motion at Paragraph 6).

7. On April 4, 2018, the Commission granted the Companies’ Motion.

#### **ARGUMENT**

##### **The Motion Does not Consider All of the Potential Effects of the Tax Act on the Financial Position of the Companies.**

The Commission does not have before it all of the information that would provide a complete picture of the effect of the Tax Act on the Companies’ financial position, and specifically all of the effects that the application of Section 133312(B) of the Tax Act will have on the operations of the Companies. As set out below, the Petitioners have identified at least two areas in which classifying CIAC as ordinary income may provide benefits to the Companies such that forcing those who make CIAC to bear the tax burden of those contributions would be inappropriate. As such, the Commission must reconsider its decision to grant the Motion and delay any decision on the Motion until it has considered all the facts and arguments that may be considered in this Docket.

The Companies themselves have argued to this Commission the dangers of viewing piece parts of the Tax Act in isolation. As noted by the Companies in their previous comments in this Docket, “Palmetto will need until May 31, 2018 to fully understand, evaluate, and report the impact of the Act on its taxes.” Further, the Companies proposed to the Commission that they “submit a financial statement which reflects (1) 2017 revenues and expenses (including income taxes), (2) adjusted 2017 revenues and expenses taking into account the impact of the Act, and (3) any additional information which will inform the Commission regarding the overall impact of the Act on Palmetto’s financial status.” (Comments of the Companies filed January 24, 2018).

While Petitioners do not currently have the benefit of the financial statements of the Companies, there are at least two effects of treating CIAC as income that were not presented in the Motion or considered in the Order.

#### **Depreciation of CIAC Property**

Neither the Motion nor the Order considered the direct tax benefit that the Companies will realize from depreciating the property that creates the CIAC income. Because the Companies will recognize income on the CIAC received from Petitioners (and others), they will have a depreciable basis in the contributed property that may be recovered over the useful life of the contributed property. 26 U.S. Code § 362. The ability to fully depreciate the contributed property results in zero income over its full depreciable life, leaving the only cost to the Company as the financing costs related to paying the tax in the year the contribution is received and recovering the cost and taking the deductions over the useful life of the contributed property. Therefore, the true cost of treating CIAC as income is only a fraction of the tax

multiplier sought by the Companies. In other words, the “tax multiplier” passes through all of the costs incurred from recognition of the CIAC income, but none of the tax benefit from depreciating the contributed property. As such, the tax multiplier would allow the Companies to recover substantially more than the actual costs associated with CIAC income taxation.

### **Deductibility of Interest Expense**

Another provision of the Tax Act not addressed by the Motion relates to the deductibility of the Companies’ interest expense. The Tax Act generally disallows a deduction for net interest expense in excess of 30 percent of the business’s adjusted taxable income. 26 U.S. Code § 163 (j). Because the amount of interest deductible in a given year is limited based on taxable income, the additional taxable income created by including CIAC contributions from the Petitioners (and others) in gross income allows the Companies to accelerate the deduction of a portion of the interest expense that would otherwise be disallowed and reduces taxable income.

### **Makers of CIAC and the Companies**

Finally, the Petitioners and others who develop and build projects in the Companies’ service areas generate customer growth for the Companies, in addition to the substantial CIAC that inures to the benefit of the Companies and their customers. The tax multiplier is additionally unfair and inappropriate in view of the benefits those who make CIAC confer upon the Companies. As businesses that will pay more to the Companies as the result of this tax multiplier, the Petitioners have a right to be heard by the Commission with respect to its effects and the broader effects of the Tax Act on the Companies.

### **CONCLUSION**

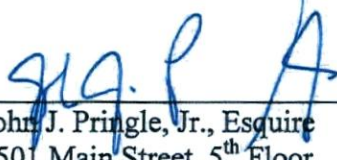
As PUI and PWC have stated to this Commission, the Tax Act is too complicated to take any one provision and evaluate its impact in isolation. The only way to appropriately consider the impact is as a whole, as the Companies have proposed to do. Further, the Commission must consider also those benefits makers of CIAC confer on the Companies.

Therefore, the Commission should rehear or reconsider its decision to allow the Companies to add a "tax multiplier" to their rate schedules.

Respectfully submitted,

**ADAMS AND REESE LLP**

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April 24, 2018  
Columbia, South Carolina

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**CERTIFICATE OF SERICE**

This is to certify that I have caused to be served this day, the **Petition for Rehearing or Reconsideration** to the individuals listed below via electronic mail to the e-mail address on file with the Public Service Commission

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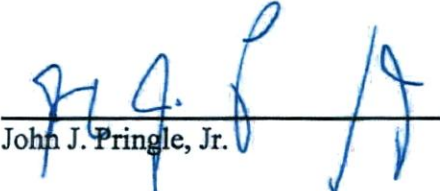
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